Supreme Court, U.S.
FILED
MAR 13 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1303

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

SHARON KOWALSKI,

Petitioner,

vs.

DONALD KOWALSKI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

REPLY OF PETITIONER

Of Counsel:
JANLORI GOLDMAN
Minnesota Civil Liberties Union
1021 West Broadway
Minneapolis, MN 55411
FAEGRE & BENSON
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402

BRIAN B. O'NEILL
Counsel of Record
AMY B. BROMBERG
ALAN M. ANDERSON
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 371-5300
Attorneys for Sharon Kowalski and Volunteer Attorneys for Minnesota Civil Liberties Union

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

No. 85-1303

SHARON KOWALSKI,

Petitioner,

vs.

DONALD KOWALSKI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

REPLY OF PETITIONER

The arguments of respondent Donald Kowalski, guardian, like the opinion of the Minnesota Court of Appeals, highlight the troublesome issues before this Court. Sharon Kowalski desires her *own* representation in proceedings that determine, among other things, the scope of her incapacity and the extent of control that a guardian or conservator may have over her. For tactical reasons, her guardian, who is directly adverse to her on these issues, filed a motion in the Minnesota Court of Appeals to have her counsel removed. The Court of Appeals,

without directing an evidentiary hearing on Sharon's retention of counsel, prohibited The Minnesota Civil Liberties Union (the "MCLU") and a reputable Minneapolis law firm not only from representing Sharon, but also from associating with her court-appointed counsel.

Sharon's position is that she has both the capacity and the right to choose counsel, particularly where it costs the state and her estate nothing. The Catch-22 response of the Court of Appeals and her guardian is that, while she has a right to a hearing and appeal to contest her general capacity, she must rely on counsel appointed by the probate court because it "appears" that she lacks the capacity to choose a lawyer.[1] Due process requires more.

The factual substance of the guardian's response in this Court—the so-called medical reports—are letters obtained by guardian's counsel for purposes of litigation and selective excerpts, from an extensive factual record, that reflect little of what went on in the trial court. Neither the trial court nor the appellate court relied on the guardian's bill of particulars. As an aside, after three meetings with Sharon, both Amy Bromberg and Janlori Goldman believe Sharon retained them.

With regard to retention of counsel, the Minnesota Court of Appeals held that "it *appears* the trial court has determined the ward is incapable of independently retaining counsel . . ." The Minnesota Court of Appeals also held that "court-appointed counsel had *apparently* not been authorized to associate with the MCLU attorneys . . ." The Court of Appeals did not rely on the un-crossexamined paper solicited by the

---

[1] Alternatively stated, Sharon has a right to a hearing and appeal but she has to use counsel that does not threaten her adversary. The only court we know of where such procedures pass muster is the one run by Lewis Carroll's Queen of Hearts.

guardian's counsel for purposes of his motion practice. The sole basis of the Court of Appeals' action was supposition about what the trial court did and did not do.

The Court of Appeals disenfranchised counsel by assumption and left Sharon without the counsel she chose. The issues before this Court deal with whether the lower courts can, by supposition, summarily disenfranchise counsel in civil proceedings that are as important to individual liberty as criminal actions. There is no guidance from this Court on the substantive or procedural rights of someone in Sharon's situation to counsel of choice. Without such guidance, other courts will treat the right to counsel with the same cavalier attitude as did the Minnesota Court of Appeals.

Dated: March 14, 1986.

Respectfully submitted,

Of Counsel:
JANLORI GOLDMAN
Minnesota Civil Liberties Union
1021 West Broadway
Minneapolis, MN 55411
FAEGRE & BENSON
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402

BRIAN B. O'NEILL
Counsel of Record
AMY B. BROMBERG
ALAN M. ANDERSON
2300 Multifoods Tower
33 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 371-5300
Attorneys for Sharon Kowalski and Volunteer Attorneys for Minnesota Civil Liberties Union